

By: Smith

H.B. No. 1764

A BILL TO BE ENTITLED

AN ACT

relating to the distribution of ale by certain brewers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) the state is authorized under the Twenty-first Amendment of the United States Constitution to promote the public's interest in the fair, efficient, and competitive marketing of ale in this state;

(2) the United States Supreme Court in Granholm v. Heald, 544 U.S. 460 (2005), has recognized that the three-tier system of regulating the alcoholic beverage industry is unquestionably legitimate;

(3) in Granholm, the United States Supreme Court further recognized that while the states are entitled to regulate the production and sales of liquor within their borders, the right is nonetheless subject to the provisions of the Constitution of the United States, including the Interstate Commerce Clause, and laws regulating the alcoholic beverage industry may not discriminate against out-of-state participants or give undue deference to local participants and may not ignore other provisions of the constitution, including the Supremacy Clause, Commerce Clause, and the Privileges and Immunities Clause with its nondiscriminatory principles;

(4) the state is authorized to promote, market, and

1 educate consumers about the emerging small brewing industry;

2 (5) it is in the state's interest to encourage
3 entrepreneurial and small business development opportunities in
4 the state that will lead to new capital investment in the state,
5 create new jobs in the state, and expand the state and local tax
6 base; and

7 (6) it is the public policy of the state to exercise
8 the police power of the state to protect the welfare, health, peace,
9 temperance, and safety of the people of Texas.

10 SECTION 2. Section 12.05, Alcoholic Beverage Code, is
11 amended to read as follows:

12 Sec. 12.05. SALES BY CERTAIN BREWERS. (a) The holder of a
13 brewer's permit whose annual production of ale [~~in this state does~~
14 ~~not exceed,~~] together with the annual production of beer by the
15 holder of a manufacturer's license [~~acting under the authority of~~
16 ~~Section 62.12 of this code]~~ at the same premises does not exceed
17 125,000[~~, a total of 75,000~~] barrels[~~7~~] may sell ale produced under
18 the permit to those persons to whom the holder of a general class B
19 wholesaler's permit may sell malt liquor under Section 20.01(3) [~~of~~
20 ~~this code~~].

21 (b) The total combined sales of ale under this section,
22 together with the sales of beer by the holder of a manufacturer's
23 license under Section 62.12 at the same premises, may not exceed
24 40,000 barrels annually.

25 (c) With regard to [~~such~~] a sale under this section, the
26 brewer has the same authority and is subject to the same
27 requirements that apply to a sale made by the holder of a general

1 class B wholesaler's permit.

2 SECTION 3. Chapter 12, Alcoholic Beverage Code, is amended
3 by adding Section 12.051 to read as follows:

4 Sec. 12.051. REPORT OF SALES TO RETAILER. (a) Not later
5 than the 25th day of each month, the holder of a brewer's permit
6 shall file a report with the commission that contains information
7 relating to the sales made by the brewer to a retailer during the
8 preceding calendar month.

9 (b) The commission shall by rule determine the information
10 that is required to be reported under this section and the manner in
11 which the report must be submitted to the commission. The
12 commission may require the report to contain the same information
13 reported to the comptroller under Section 151.462, Tax Code.

14 SECTION 4. This Act takes effect September 1, 2013, but only
15 if the 83rd Legislature, Regular Session, 2013, enacts legislation
16 that becomes law and that amends the Alcoholic Beverage Code to
17 allow small brewers to sell beer to retailers. If the 83rd
18 Legislature, Regular Session, 2013, does not enact such legislation
19 that becomes law, this Act has no effect.